IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Civil Second Appeal No.248/1984

Takhat Singh @ Norat Mal S/o Shri Ram Baksh Tanwar
...plaintiff-appellant
Versus
The Municipal Council, Ajmer through its Administrator
...defendant-respondent

Date of Judgment ::: 14th July, 2006

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Shri R.P. Agarwal for plaintiff-appellant
Shri S.R. Surana with
Shri Ramaotar Sharma for defendant-respondent
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By the Court:-

Plaintiff-appellant Takhat Singh @ Norat Mal S/o Shri Ram Baksh Tanwar has preferred this appeal under Section 100 of the Code of Civil Procedure against the judgment and decree dated 30.8.1984 passed by the Additional Civil Judge No.2, Ajmer, in Civil Appeal No.57/1983, whereby he dismissed the appeal of the plaintiff appellant and affirmed the judgment and decree dated 7.11.1977 passed by the Munsif, Ajmer City (East) Ajmer, in Civil Suit No.282/75, whereby the suit of the plaintiff-appellant for perpetual injunction was dismissed.

This court while admitting this second appeal on 19th of December, 1984, formulated the following questions of law involved in this appeal:-

> "1. Whether the notice Ex.5 dated 24.7.1975 is illegal and void and could not be issued

under the provisions of Section 170 (11) of the Rajasthan Municipalities Act, 1959?

2. Whether in view of Ex.11 the Municipality having accepted compensation for granting permission to raise compound wall over the chabutari by accepting a sum of Rs.150/- and granting permission dated 3.1.1975, the revocation of the permission vide Ex.15 was invalid and contrary to the provisions of the Rajasthan Municipalities Act, 1959?

3. Whether the Municipal Council has not violated the principles of natural justice by unilaterally cancelling the sanction already granted for construction of chabutari?"

I have heard learned counsel for both the parties.

The plaintiff-appellant filed a suit for perpetual injunction against the defendant Municipal Council, Ajmer in the court of Munsif Magistrate, Ajmer City (East), Ajmer, on 30th of July, 1975, wherein it was pleaded by him that he is the owner of the property bearing AMC No.76/16 (correct number is 16/79) situated at Purani Mandi, Ajmer. The defendant vide letter dated 3.1.1975 asked the plaintiff to remove constructions, the details of which were given in para 2 of the plaint. It was further pleaded that the plaintiff deposited Rs.50/- with the defendant as compensation and after depositing the amount the said construction was regularized. However, the defendant, vide its letter dated 24.7.1975 again asked the plaintiff to remove the construction and gave threatening to remove the

said construction at the cost of the plaintiff in case the said construction is not removed within seven days of the receipt of the said letter, therefore, the present suit was filed with the prayer to decree the suit of the plaintiff for perpetual injunction restraining the defendant not to remove the construction detailed in para 1 of the plaint.

The defendant-respondent filed written statement dated 31.12.1975 in the lower court on 28.1.1976, wherein it was pleaded that the permission of construction was obtained by misrepresentation and concealment of fact by the plaintiff. The compound wall exists on the land which vests in the Municipality and is a part of the public way and no permission could have been granted for putting any construction over the passage. The issuance of notice dated 24.7.1975 was admitted and it was submitted that the earlier sanction was revoked by the Administrator as the sanction was obtained by concealment of facts. The construction which was regularized were on municipal land and found part of passage and, therefor,e the notice dated 24.7.1975 was rightly given. It was also pleaded that the proper remedy for the plaintiff against the notice dated 24.7.1975 was by way of appeal to the Collector and no appeal having been preferred within 30 days the said notice has become final and the suit is liable to be dismissed.

On the basis of the pleadings of the parties the following issues were framed on 28.10.1976:-

> “1. Whether the plaintiff is the owner of the property bearing AMC No.16/79?

2. Whether the letter dated 24.7.1975 issued by the Municipal Council is illegal, arbitrary and without jurisdiction?

3. Whether the permission was obtained by misrepresentation and concealment of facts as alleged in para 3 of the written statement?

4. Whether the suit is not maintainable for reasons alleged in para 10 of the written statement?

5. Relief?"

Both the parties led oral and documentary evidence in support of their case. The learned lower court vide its judgment dated 7.11.1977 dismissed the suit of the plaintiff. Being aggrieved with the same an appeal was preferred which was also dismissed by the lower appellate court.

The learned counsel for the plaintiff-appellant contended that the disputed chabutari as well as the construction raised thereon were on the land belonging to the plaintiff and the same was the part of his property bearing AMC No.16/79. The plaintiff purchased the property in dispute through registered sale-deed dated 23.2.1968 (Exhibit-1) from Kishan Singh S/o Bakhtawar Singh and Kunwar Jitendra Singh S/o Shri Kishan Singh. Shri Bakhtawar Singh purchased the said property vide certificate of sale (Exhibit-2). The plaintiff thereafter applied for sanction of the plan to the defendant but it was partly sanctioned. The plaintiff thereafter wrote a letter (Exhibit-3) dated 12.7.1972 to sanction his plan in toto. The defendant vide

Exhibit-11 passed an order for deposit of Rs.50/- as compensation for unauthorized construction. The plaintiff received a letter Exhibit-12 from the defendant to deposit Rs.50/- which was deposited vide receipt (Exhibit-13) on 3.1.1975. The learned counsel for the appellant, therefore, contended that the defendant committed an illegality in issuing the notice (Exhibit-15) to the plaintiff.

The learned counsel for the respondent contended that the disputed construction was raised by the plaintiff on the public land/public way belonging to the defendant Municipal Council, Ajmer. The plaintiff obtained the regularization order in his favour by making misrepresentation and showing the said land as his own whereas subsequently it came to the notice of the defendant that the said land belongs to Municipal Council, Ajmer, and in fact it was a part of the public way itself, therefore, the notice dated 24.7.1975 was rightly issued to the plaintiff. The learned counsel for the respondent also contended that the plaintiff filed a suit for perpetual injunction only without any averment and prayer about declaration to the effect that the land in dispute belongs to the plaintiff, therefore, the present suit for perpetual injunction was not maintainable without seeking any relief in respect of declaration. In support of his contention he referred following decisions:-

1. 1999 (2) WLC (Rajasthan) 595 Gulam Mohd. Qureshi Vs. Nagar Nigam Jaipur.

2. 1996 (3) WLC (Rajasthan) 155 Bhurji & Another Vs.

I have considered the submissions of the learned counsel for both the parties and minutely scanned the impugned judgments as well as the record of both the courts below.

So far as questions of law involved in the present case, as formulated by this court on 19.12.1984 and reproduced above, are concerned, I find that although the above formulated questions are also involved in the present case but the main question, in my opinion, which is involved in the present case, is as under:-

> "Whether the Municipal Council, Ajmer, was competent to give permission for raising construction or to regularize the construction already made, on the land, which is part of public way, or not?"

My answer to the above question is that Municipal Council was not competent to give permission for raising construction or to regularize the construction already made, on the land which is part of public way. The land of public way vest in public or it is dedicated to public at large, therefore, Municipal Council had no jurisdiction to regularize the unauthorized construction raised by appellant by charging compensation of Rs.50/-. The order passed by Municipal Council regularizing the illegal construction of appellant itself was without authority of law, therefore, Municipal Council was justified in issuing another order asking the plaintiff to remove construction raised on public land.

The question as to whether a particular piece of land is part of the public way or not is purely a question of fact. Whether the disputed land on which the plaintiff has raised a construction is a part of the public way or not, is also a question of fact. The lower court as well as the lower appellate court, while deciding issue no.2, have recorded a finding that the disputed piece of land is a part of the public way. The lower appellate court, while deciding issue has appreciated the oral and documentary evidence of both the parties and while considering the evidence the lower appellate court has referred the documents of the plaintiff himself. Exhibit-1 is the sale-deed in favour of the plaintiff but the annexed map to the sale-deed was not placed on the record, therefore, no inference can be drawn on the basis of this document that the land in dispute belongs to the plaintiff. Exhibit-2 the sale certificate is the document by which the vendor of the plaintiff purchased the property in dispute and the document exhibit-2 reveals that the boundaries of the property have been mentioned and towards eastern side the description has been mentioned as 'sarkaari pakhaana' (government latrine). The plaintiff has admitted that the property which he purchased vide Exhibit-1, is the same which was purchased by his vendor vide Exhibit-2. Therefore, there is no dispute that Exhibit-2 relates to the property in dispute itself. Exhibit-3 is the letter written by the plaintiff on 12th of July, 1972 to the Municipal Council, Ajmer, and in para 2 thereof the

plaintiff has described the boundaries of his property towards eastern side as “municipal latrines”. The documents of the plaintiff-appellant itself make it clear that the municipal latrines were situated towards eastern side of the property belonging to plaintiff, which are not in existence at present and a construction has been raised over it. It shows that the disputed piece of land and construction made thereon were not part of the property of the plaintiff, which was purchased by his vendor vide Exhibit-2 and by the plaintiff vide Exhibit-1. It is also relevant to mention that DW-1 Paumal was examined on behalf of the defendant, who stated that the disputed chabutari is on the land belonging to Municipal Council and is a part of the public way. The lower court as well as the lower appellate court both have considered the evidence, both - oral and documentary, of the plaintiff as well as the defendants and thereafter recorded a finding that the piece of land in dispute i.e. Chabutari and the construction raised over it was belonging to the defendant Municipal Council and was part of the public way and the same was not purchased by the plaintiff vide sale-deed (Exhibit-1) and vendor of the plaintiff vide Exhibit-2. The findings of both the courts below are based on oral and documentary evidence and there is a concurrent finding of fact that the chabutari and construction raised over it by the plaintiff was belonging to the Municipal Council and the same was part of the public way itself and the plaintiff had no right whatsoever to raise the construction over it. This

being the concurrent finding of fact by both the courts below, no interference can be made by this court in this second appeal under Section 100 CPC.

So far as the questions of law formulated by this court, as reproduced above, are concerned, I find that this is a case where the question of public way is involved and even if notice dated 24.7.1975 (Exhibit-15) given under Section 170 (11) of the Rajasthan Municipalities Act, 1959 (for short, 'the Act, 1959') was not legal then it makes no difference for the reason that the action of the plaintiff was void-ab-initio and he had no right whatsoever to raise any construction over the land belonging to the public way. The Municipal Council had no jurisdiction to give sanction to raise construction over land which is part of public way or to regularize the construction raised by the plaintiff on the disputed piece of land which was part of public way. It is relevant to mention that the Municipal Council was competent to give notice under Section 203 of the Act, 1959 and the notice (Exhibit-15) cannot be said to be illegal only for the reason that a wrong Section i.e. Section 170 has been quoted in place of Section 203 of the Rajasthan Municipalities Act in the notice. So far as the order for compensation and deposit ofRs.50/- as compensation by the plaintiff for the unauthorized construction and thereafter recalling of the order granting permission or regularizing the unauthorized construction by Municipal Council is concerned, the Municipal Council, Ajmer, was fully competent and justified, and rightly did it. I further find

that Exhibit-15, the notice dated 24.7.1975 was in the shape of notice itself by giving seven days time to remove the construction. The plaintiff instead of giving any reply to it showing the land in dispute as his own property, filed the present suit, therefore, I do not find any violation of principles of natural justice also and more-so when the plaintiff raised construction on the land belonging to public way then it cannot be said that there is any violation of principles of natural justice looking to the facts and circumstances of the present case. Therefore, all the questions formulated by this court on 19.12.1984 are liable to be decided against the appellant and the present appeal is liable to be dismissed.

As discussed above, I find that both the courts below have recorded the concurrent finding of fact while deciding issue no.2 that the disputed chabutari and the construction raised thereon by the plaintiff was a part of the public land belonging to the Municipal Council, Ajmer and the same was part of the public way. Therefore, no interference can be made by this court in this second appeal.

In the result, the appeal fails and the same is dismissed with no order as to costs.

(Narendra Kumar Jain) J.

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